

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2005-015360

05/09/2006

HONORABLE PETER SWANN

CLERK OF THE COURT
D. Kenney
Deputy

FILED: 05/12/2006

NORTH CANYON RANCH OWNERS
ASSOCIATION

AUGUSTUS H SHAW IV

v.

STACY K MOBBS

STACY K MOBBS
23650 N 36TH DR
GLENDALE AZ 85310

MARK E LINES
RICHARD E CHAMBLISS
ALTERNATIVE DISPUTE
RESOLUTION - CCC
STATE BAR OF ARIZONA

MINUTE ENTRY

10:02 a.m. This is the time set for Status Conference. Plaintiff is represented by counsel, Mark Lines. Defendant is present on her own behalf.

Court reporter, Judie Bryant, is present.

Discussion is held.

LET THE RECORD REFLECT that Plaintiff's counsel is advised that no attorney's fees will be awarded in this case, based upon the Court's earlier ruling on plaintiff's Motion for Summary Judgment and its concern over counsel's subsequent conduct.

The Court notes its disappointment regarding the professional conduct of Mr. Shaw in this matter. This is a small case – exclusive of fees and interest, the amount sought to be collected was less than \$400.00. Though the Court has previously agreed that Plaintiff would have been entitled to summary judgment on the principal amount due, the Motion for Summary Judgment was denied. The Court notes its disappointment regarding the professional conduct of Mr. Shaw in this matter. This is a small case – exclusive of fees and interest, the amount sought to be collected was less than \$400.00. Though the Court has previously agreed that Plaintiff would have been entitled to summary judgment on the principal amount due, the Motion for Summary Judgment was denied.

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Judgment was unaccompanied by a statement of facts or evidence that would have permitted calculation of that amount.¹ Had the Motion been prepared in a manner consistent with Rule 56(c), this matter could have been resolved efficiently. Had Mr. Shaw presented Ms. Mobbs with accurate billing records, a motion would likely not have been required at all. Indeed, Ms. Mobbs has indicated her willingness to stipulate to judgment in the amount due, and she has attempted in good faith to pay far more than that amount simply to dispose of this litigation. [Plaintiff's Reply in Support of Motion for Summary Judgment, at 3] Sadly, however, this case has become an example of the risk to the public of abusive litigation practices run amok. The Court is simply a forum for the resolution of disputes, not a weapon to be used to generate leveraged fee awards.

After the Court indicated that there would likely be no award of fees in this case, Defendant was billed approximately \$6,000 for Plaintiff's fees. Though this billing was retracted after Ms. Mobbs brought the matter to the Court's attention, Mr. Shaw continued to demand that she "settle" the case for \$2,000.00 – more than 400% of the amount actually owed. Coupled with this monetary demand (which counsel could not justify at today's hearing) was a demand that Defendant drop complaints that she had filed with the State Bar of Arizona against Mr. Shaw and with the State Board of Accountancy against a member of the Association. The Court is not privy to the contents of these complaints and expresses no view on their merit. But the use of a threat of continued litigation in an attempt to dispense with possible disciplinary proceedings is highly inappropriate.

The Court specifically noted to Mr. Shaw at the March 10, 2006 hearing the unlikelihood of any award of fees being entered in this matter and admonished Mr. Shaw of the same in the Court's minute entry dated April 6, 2006. Although the Court recognizes its obligation to award reasonable attorney's fees when warranted in cases such as this, it is the Court's view that no award of attorney's fees would be reasonable in this matter and that any fees incurred would be outweighed by an award of damages to Ms. Mobbs pursuant to A.R.S. § 12-349. Mr. Line's citation in open court of *Heritage Heights Homeowners Ass'n. v. Esser*, 115 Ariz. 330 (Ct. App. 1977), for the proposition that the Court is required to award fees regardless of their disproportionality to the amount in controversy is unavailing. The contractual language at issue in that case required an award of "all attorneys' fees and costs." Here, both the contract and the statute require an award of "reasonable" fees, and counsel conceded in open court that the determination of reasonableness is one for the Court.

Compounding the Court's concern is Mr. Shaw's filing of a plainly frivolous motion – purportedly pursuant to ER 4.2 -- to prohibit Ms. Mobbs from contacting her own homeowner's association regarding this matter. As a nonlawyer, Ms. Mobbs is not bound to the strictures of

¹ To the extent that there might be other amounts due, such as late fees and other fines to support the \$1,479 lien, the motion was not accompanied by evidence that substantiated or explained such liabilities. At today's status conference, counsel conceded that "a final determination of the amounts chargeable pursuant to the governing documents" has still not yet been made – despite the filing of the Motion for Summary Judgment months earlier.

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ER 4.2. The Court has also reviewed Mr. Shaw's March 21, 2006 correspondence to Ms. Mobbs in this regard, and finds it to be abusive and inconsistent with the fundamental principles of professionalism sought to be advanced by the Supreme Court and the State Bar.² Lawyers should perform their function with the dignity rightly expected of officers of the Court. When a lawyer communicates in such fashion while representing a client in connection with a judicial proceeding, the profession as a whole suffers, and mounting public criticism of lawyers is more difficult to defend.

IT IS ORDERED endorsing this minute entry to the State Bar of Arizona.

IT IS FURTHER ORDERED vacating the appointment of Judge *Pro Tempore* Richard Chambliss in this matter.

IT IS FURTHER ORDERED setting a Bench Trial on **May 15, 2006 at 10:45 a.m. (30 minutes)** before:

**HONORABLE PETER B. SWANN
MARICOPA COUNTY SUPERIOR COURT
OLD COURT HOUSE
125 W. WASHINGTON
2nd FLOOR, COURTROOM 202
PHOENIX, AZ 85003
602-506-7959 TEL
602-372-8545 FAX**

THIS IS A FIRM TRIAL SETTING.

The Court further notes that Plaintiff may submit a stipulated form of Judgment containing an accounting of unpaid assessments and interest collected thereon prior to trial. Upon approval of the proposed Judgment, the Court shall vacate the trial.

10:37 a.m. Hearing concludes.

² The correspondence began:

Ms. Mobbs:

I HAVE WARNED YOU TIME AND TIME AGAIN NOT TO CONTACT THE BOARD OF DIRECTORS. YOU ARE NOT THE ASSOCIATION'S ATTORNEY AND MUST REFRAIN FROM GIVING THE ASSOCIATION ADVICE. SINCE YOU DO NOT SEEM TO UNDERSTAND THIS, I WILL SAY IT AGAIN. IF YOU CONTACT THE ASSOCIATION WITHOUT FIRST CONTACTING ME ONE MORE TIME. [sic] I WILL FILE A MOTION WITH THE COURT TO REQUEST THAT YOU BE CENSORED. ALL COMMUNICATION GOES THROUGH ME AND THEN I WILL PRESENT IT TO THE ASSOCIATION.

(Emphasis in original).